

SSB 5692 - H COMM AMD

By Committee on Financial Institutions & Insurance

NOT ADOPTED 04/15/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
4 tax refund anticipation loan act.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Borrower" means a taxpayer who receives the proceeds of a
8 refund anticipation loan.

9 (2) "Department" means the department of financial institutions.

10 (3) "Director" means the director of the department of financial
11 institutions.

12 (4) "Facilitator" means a person who receives or accepts for
13 delivery an application for a refund anticipation loan, delivers a
14 check in payment of refund anticipation loan proceeds, or in any other
15 manner acts to allow the making of a refund anticipation loan.
16 "Facilitator" does not include a bank, thrift, savings association,
17 industrial bank, or credit union operating under the laws of the United
18 States or this state, an affiliate that is a servicer for such an
19 entity, or any person who acts solely as an intermediary and does not
20 deal with a taxpayer in the making of the refund anticipation loan.

21 (5) "Lender" means a person who extends credit to a borrower in the
22 form of a refund anticipation loan.

23 (6) "Person" means an individual, a firm, a partnership, an
24 association, a corporation, or other entity.

25 (7) "Refund anticipation loan" means a loan borrowed by a taxpayer
26 from a lender based on the taxpayer's anticipated federal income tax
27 refund.

28 (8) "Refund anticipation loan fee" means the charges, fees, or
29 other consideration imposed by the lender for a refund anticipation

1 loan. This term does not include any charge, fee, or other
2 consideration usually imposed by the facilitator in the ordinary course
3 of business for nonloan services, such as fees for tax return
4 preparation and fees for electronic filing of tax returns.

5 (9) "Refund anticipation loan fee schedule" means a listing or
6 table of refund anticipation loan fees charged by the facilitator or
7 the lender for three or more representative refund anticipation loan
8 amounts. The schedule shall list separately each fee or charge
9 imposed, as well as a total of all fees imposed, related to the making
10 of refund anticipation loans. The schedule shall also include, for
11 each representative loan amount, the estimated annual percentage rate
12 calculated under the guidelines established by the federal truth in
13 lending act, 15 U.S.C. Sec. 1601 et seq.

14 (10) "Taxpayer" means an individual who files a federal income tax
15 return.

16 NEW SECTION. **Sec. 3.** (1) No person may individually, or in
17 conjunction or cooperation with another person, solicit the execution
18 of, process, receive, or accept an application or agreement for, a
19 refund anticipation loan without first being registered with the
20 director as a facilitator.

21 (2) This section does not apply to a person doing business as a
22 bank, thrift, industrial bank, savings and loan association, or credit
23 union, under the laws of the United States or any state.

24 (3) This chapter shall preempt and be exclusive of all local acts,
25 statutes, ordinances, and regulations relating to refund anticipation
26 loans. This subsection shall be given retroactive and prospective
27 effect.

28 NEW SECTION. **Sec. 4.** (1) No facilitator may individually, or in
29 conjunction or cooperation with another person, solicit the execution
30 of, process, receive, or accept an application or agreement for, a
31 refund anticipation loan without being accepted by the internal revenue
32 service as an authorized IRS e-file provider.

33 (2) On or before December 31st of each year, a facilitator shall
34 register with the department by providing the department with:

35 (a) A list of individuals that have been accepted by the internal

1 revenue service as authorized IRS e-file providers for the current tax
2 filing year;

3 (b) A list of the electronic filing identification numbers issued
4 to the facilitator by the internal revenue service; and

5 (c) A five-dollar processing fee for each authorized e-file
6 provider on the list.

7 (3) After the December 31st deadline, a facilitator may, with the
8 approval of the department amend the registration required in
9 subsection (2) of this section to reflect additions or deletions of
10 office locations or electronic filing identification numbers issued by
11 the internal revenue service.

12 (4) The department shall make available to the public a list of all
13 facilitators registered under this section. The electronic filing
14 identification numbers required under subsection (2) of this section
15 shall be kept confidential and are not subject to public disclosure
16 under chapter 42.17 RCW.

17 NEW SECTION. **Sec. 5.** (1) For all refund anticipation loans, a
18 facilitator must provide a clear disclosure statement to the borrower,
19 prior to the borrower's completion of the application. The disclosure
20 statement required under this subsection must be printed in a minimum
21 of ten-point type. Further, the disclosure statement must contain the
22 following:

23 (a) The refund anticipation loan fee schedule; and

24 (b) A written statement containing the following elements:

25 (i) That a refund anticipation loan is a loan, and is not the
26 borrower's actual income tax refund;

27 (ii) That the taxpayer can file an income tax return electronically
28 without applying for a refund anticipation loan;

29 (iii) The average times according to the internal revenue service
30 within which a taxpayer who does not obtain a refund anticipation loan
31 can expect to receive a refund if the taxpayer's return is (A) filed
32 electronically and the refund is directly deposited to the taxpayer's
33 bank account or mailed to the taxpayer, and (B) mailed to the internal
34 revenue service and the refund is directly deposited to the taxpayer's
35 bank account or mailed to the taxpayer;

36 (iv) That the internal revenue service does not guarantee that it

1 will pay the full amount of the anticipated refund and it does not
2 guarantee a specific date that a refund will be deposited into a
3 taxpayer's financial institution account or mailed to a taxpayer;

4 (v) That the borrower is responsible for repayment of the loan and
5 related fees in the event that the tax refund is not paid or paid in
6 full;

7 (vi) The estimated time within which the loan proceeds will be paid
8 to the borrower if the loan is approved; and

9 (vii) The fee that will be charged, if any, if the borrower's loan
10 is not approved.

11 (2) The following additional information must be provided to the
12 borrower of a refund anticipation loan before consummation of the loan
13 transaction:

14 (a) The estimated total fees for obtaining the refund anticipation
15 loan; and

16 (b) The estimated annual percentage rate for the borrower's refund
17 anticipation loan, using the guidelines established under the federal
18 truth in lending act (15 U.S.C. Sec. 1601 et seq.).

19 NEW SECTION. **Sec. 6.** A borrower may rescind a loan, on or before
20 the close of business on the next day of business at the location where
21 the loan was originated, by returning the principal in cash or the
22 original check disbursed by the facilitator to fund the refund
23 anticipation loan. The facilitator may not charge the borrower a fee
24 for rescinding the loan or a refund anticipation loan fee if the loan
25 is rescinded but may charge the borrower the administrative cost of
26 establishing a bank account to electronically receive the refund. The
27 facilitator shall conspicuously disclose to the borrower this right of
28 rescission in writing in the disclosure statement required under
29 section 5(1) of this act.

30 NEW SECTION. **Sec. 7.** It is unlawful for a facilitator of a refund
31 anticipation loan to engage in any of the following activities:

32 (1) Misrepresent a material factor or condition of a refund
33 anticipation loan;

34 (2) Fail to process the application for a refund anticipation loan
35 promptly after the consumer applies for the loan;

1 (3) Engage in any dishonest, fraudulent, unfair, unconscionable, or
2 unethical practice or conduct in connection with a refund anticipation
3 loan;

4 (4) Arrange for a creditor to take a security interest in any
5 property of the consumer other than the proceeds of the consumer's tax
6 refund to secure payment of the loan;

7 (5) Offer a refund anticipation loan that exceeds the amount of the
8 anticipated tax refund less fees;

9 (6) Act as a facilitator unless they are authorized as an
10 electronic return originator by the internal revenue service at the
11 time; and

12 (7) Arrange for a refund anticipation loan unless the facilitator
13 is a tax preparer or works for a person that engages in the business of
14 tax preparation.

15 NEW SECTION. **Sec. 8.** Any person who knowingly and willfully
16 violates this chapter is guilty of a misdemeanor and shall be fined up
17 to five hundred dollars for each offense.

18 NEW SECTION. **Sec. 9.** The legislature finds that the practices
19 covered by this chapter are matters vitally affecting the public
20 interest for the purpose of applying the consumer protection act,
21 chapter 19.86 RCW. A violation of this chapter is not reasonable in
22 relation to the development and preservation of business and is an
23 unfair or deceptive act in trade or commerce and an unfair method of
24 competition for the purpose of applying the consumer protection act,
25 chapter 19.86 RCW.

26 NEW SECTION. **Sec. 10.** The director may adopt rules to implement
27 section 4 of this act.

28 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
29 constitute a new chapter in Title 19 RCW."

30 Correct the title.

EFFECT: Adds a registration requirement. Allows a borrower to

rescind the loan. Prohibits certain acts by a facilitator. Gives rule-making authority to the Director of the Department of Financial Institutions to implement the registration provisions.

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